

PROPOSED DECISION

Agenda ID #16733 (Rev. 1)
Adjudicatory
9/13/2018 Item #8

Decision **PROPOSED DECISION OF ALJ JUNGREIS** (Mailed 8/3/2018)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charles F. Benninghoff III,

Complainant,

vs.

San Diego Gas & Electric Company,

Defendant.

Case 18-02-007

DECISION GRANTING MOTION TO DISMISS

Summary

This decision grants San Diego Gas & Electric Company (SDG&E)'s Motion To Dismiss the Complaint of Charles F. Benninghoff III (Benninghoff) with prejudice for failure to state a cause of action for which relief may be granted. Benninghoff essentially asserts that SDG&E must provide a "reconciliation" of his solar production and the reduction of his total energy charges due to his solar production, and that the Public Utilities Commission (Commission) must create a new summary adjudicatory system. However, Benninghoff fails to state a violation of law by SDG&E. Further, SDG&E is compliant with the Net Energy Metering program (Public Utilities Code Section 2827 et seq. and related Commission decisions). Regarding

Benninghoff's remaining claim, [under any conceivable view], he is not entitled to relief regarding the establishment of a new adjudicatory system. This matter is closed.

1. Factual and Procedural Background

On February 8, 2018, Charles F. Benninghoff III (Benninghoff) filed his Complaint against San Diego Gas & Electric Company (SDG&E). The Complaint was not for monetary damages, and instead sought what is best described as a plea for declaratory relief. The Complaint's statement is not entirely consistent, and basically requests the fulfillment of several "Demands." In full, those demands read as follows:

DEMAND 1: The Public Utilities [sic] Commission PUC must force San Diego Gas & Electric to provide:

(A) a reconciliation of the amount of solar-generated power it alleges was produced by the solar panels at my residence for each month in 2017, and for every year thereafter in perpetuity;

(B) the total amount of energy charges for each such month, the total permitted charge for such energy and the amount allowed to me for the electrical power generated by my panels and the reduction from the total amount of energy charges granted by virtue of my solar generated electricity;

(C) As it is now, there is no ability to determine how much solar energy I am credited and the monthly savings gained. As well, since my solar inverter carefully calculates the energy [sic] produced, there is no way to verify (or contest) the amounts allowed to me by SDG&E.

DEMAND 2: The PUC must force SDG&E to provide the same thoughtful energy computations for every permitted energy producer who generates energy by solar power and an assisting liason [sic].

DEMAND 3: The PUC must establish a summary administrative court to decide contests.

On March 22, 2018, SDG&E filed its Answer to the Complaint, including Affirmative Defenses asserting that Benninghoff had not met his burden of alleging or showing an SDG&E violation of law, and that it had complied with California Public Utilities Commission (Commission) requirements to provide its Net Energy Metering (NEM) customers with appropriate information, and further asserting that Commission Rules bar a Complaint from being brought on behalf of others without authorization.

On March 28, 2018, Benninghoff e-mailed the Administrative Law Judge (ALJ) an intended legal brief titled “Request To Discard Answer Because It Contains False Information & Innuendos.” That document was not filed and it is unclear whether it was served on SDG&E. In that document, Benninghoff requested that the ALJ “remove DEMAND 2.” Despite Benninghoff’s request, the ALJ did not strike the SDG&E Answer.

On April 4, 2018, SDG&E filed a Motion To Dismiss the Benninghoff Complaint. In sum, the bases for the Motion is that the procedural posture and undisputed facts find that Benninghoff did not allege that SDG&E is in violation of law, and that SDG&E is in compliance with the law regarding required NEM customer information disclosures. The Motion further asserted that Benninghoff withdrew his Demand 2, and that Benninghoff’s Demand 3 cannot stand either or both because it is a request for new law or because its demand that the Commission provide administrative courts is already met.

On May 16, 2018, Benninghoff seemingly served his Opposition to the Motion To Dismiss (the document was accompanied by a Certificate Of Service,

but the document was not filed with the Commission).¹ On May 25, 2018, SDG&E filed a Reply to the Benninghoff Opposition.^{2 3}

On April 18, 2018, a Ruling set a Prehearing Conference for May 30, 2018. That Ruling expressly enabled parties to appear in person or by telephone. That Ruling also required the parties to file a Joint Case Management Statement. On May 25, 2018, on behalf of both parties, SDG&E filed a Joint Case Management Conference Statement.

Benninghoff did not appear in person or by telephone at the May 30, 2018 Prehearing Conference.

No Scoping Memo is required as the Motion To Dismiss is granted prior to the need for preparation of a Scoping Memo.

¹ The belated May 16, 2018 Benninghoff Response date (which, because it was sent by e-mail after 5:00 p.m., is deemed under Rule 1.15 of the Commission's Rules of Practice and Procedure to have been "served" on May 17 -- and further ignoring that it was not served at all and only e-mailed) is explained as follows: while there is a 15-day deadline to file responses to motions (Rule 11.1(e)), an April 24, 2018 e-mail from Benninghoff demonstrated his confusion as to the status of the Motion. Therefore, by Ruling, the ALJ granted an extension of time until May 4, 2018 for Benninghoff to file a Response to the Motion. Yet, on May 1, 2018, Benninghoff requested a further extension to file a Response to the Motion, and that request was granted and extended the deadline for response to May 16, 2018. On May 17, 2017, SDG&E "sought guidance" to confirm that Benninghoff's late Opposition would be rendered moot: that guidance was denied. The Commission notes that Benninghoff was procedurally deficient both in terms of the Opposition's timeliness and its manner of service (and lack of filing); however, as the Motion is granted on substantive grounds, the procedural failures of Benninghoff's Response need not be addressed.

² On May 2, 2018, SDG&E sought and received authorization (pursuant to Rule 1.1(f)) to file a Reply.

³ On May 29, 2018, Benninghoff served, but did not file, an "Objection To Reply." However, the Commission Rules do not provide opportunity for a Sur-reply (without seeking prior relief for such), and therefore this unfiled "Objection to Reply" document was not considered.

2. Jurisdiction

Jurisdiction for Benninghoff's Complaint is found under Rule 4.2.

Jurisdiction for SDG&E's Motion To Dismiss is found under Rule 11.2.

3. Issues Before the Commission; Discussion

The issues before the Commission are whether to grant SDG&E's Motion To Dismiss, and if so, whether to do so with prejudice.

SDG&E requests that Benninghoff's Complaint be dismissed on four bases:

First, that the Complaint fails to allege that SDG&E is in violation of law;

Second, that the undisputed facts demonstrate that SDG&E is in compliance with the law regarding NEM customer information disclosures;

Third, that Benninghoff withdrew his Demand 2 (which demanded that the Commission provide to all similarly-situated NEM customers the same relief as Benninghoff was requesting); and

Fourth, that Benninghoff's Demand 3 cannot stand either or both because it is a request for new law or because its demand that the Commission provide administrative courts is already met.

A Complaint, or part of it, may be dismissed by the Commission. The standard employed by the Commission has been alternately stated. In an initial configuration of the standard, a matter may be dismissed if, under similar treatment as a movant would receive in civil court, the undisputed facts and matters of law would result in a summary judgment.⁴ In another configuration of the standard, a matter may be dismissed if, under a well-pled complaint as

⁴ See, e.g., D.03-05-023.

required by Public Utilities Code § 1702, the factual allegations are accepted as true but the defendant is entitled to prevail as a matter of law.^{5 6 7}

3.1. Benninghoff's Complaint Fails to Allege a Violation of Law

There are two critical functional issues to review to determine the merits of the Motion vis-à-vis Benninghoff's Complaint Demand 1: (1) What happens in front of the meter and what happens behind the meter for NEM customers such as Benninghoff; (2) Whether the SDG&E bill sent to Benninghoff comports with the requirements set forth by the Commission in its Rules and as ratified by the Commission through tariffs and the relevant SDG&E Advice Letter regarding the billing form it is to use for its NEM customers.

While Benninghoff uses several terms to describe his first cause of action, it is best to use the critical Complaint language in describing Demand 1:

“(A) A reconciliation of the amount of solar-generated power [that SDG&E] alleges was produced by the solar panels at my residence for each month...

⁵ See, e.g., D.95-05-020.

⁶ Unless otherwise noted, all references are to the Public Utilities Code.

⁷ Section 1702 reads in full as follows: “Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service.”

(B) The total amount of energy charges for each month, the total permitted charge for such energy and the amount allowed to me for the electrical power generated by my panels and the reduction from the total amount of energy charges granted by virtue of my solar generated electricity.

(C) As it is now, there is no ability to determine how much solar energy I am credited and the monthly savings gained...”

In sum, Benninghoff wishes to have SDG&E prepare a monthly bill that informs him how much electricity his solar panels produced, the cost of his monthly electricity use, and the reduction in that cost based upon his electrical production.

Benninghoff is a NEM customer of SDG&E.⁸ Section 2827 et seq. controls the various aspects of the relationship between a utility and a NEM customer. The Commission also directs certain aspects of the relationship between a utility and a NEM customer.

The terms of the Complaint fail to properly address and apply the requirements with which California regulates electricity for residential solar customers who stand in a NEM customer relationship with their utility, as is the case with Benninghoff in his relationship to SDG&E. As stated in § 2827(b)(6), NEM is the process of “measuring the difference between the electricity supplied through the electrical grid and the electricity generated by an eligible customer-generator and fed back to the electrical grid over a 12-month period...” Under § 2827(c)(1), NEM customer generators, such as Benninghoff, have a single two-way meter that measures flow from the grid to the residence and from the residence to the grid.

⁸ SDG&E Answer at 3.

Further, for purposes of billing, “the net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer-generator and fed back to the electrical grid over a 12-month period....” (§ 2827(h).) Therefore, the total energy produced by Benninghoff’s solar installation behind the meter is irrelevant for billing purposes. SDG&E relies upon and bills based on the energy that is received from and delivered to Benninghoff based solely upon what SDG&E sees from in front of the meter.

Put simply, the utility is in front of the meter and only sees the net amount of electricity that is flowing in one direction or the other at any given time. The utility is not, and cannot be, behind the meter determining how much electricity the customer may be simultaneously generating (from his solar installation) and using (in his residence). In sum, SDG&E does not know how much energy is produced by Complainant’s solar installation.⁹

Therefore, with respect to Complainant’s Demand 1 that SDG&E provide “a reconciliation of the amount of solar-generated power it alleges was produced by the solar panels at my residence for each month in 2017, and for every year thereafter in perpetuity,” SDG&E is not required to do so. Further, SDG&E in fact cannot do so. Consequently, under basic principles of complaint pleading, this means that Benninghoff’s Complaint cannot prevail as it fails to adequately

⁹ Interestingly, Benninghoff makes clear that at all times he knows exactly how much energy his solar installation is creating, both in real time and in stored information logs (as noted in “II. History of the Benninghoff Solar Plant” of Benninghoff’s “Opposition to Motion to Dismiss of San Diego Gas & Electric Company (SDG&E)”).

allege a violation of law because it does not allege that SDG&E is failing its obligations under the law to provide the requested reconciliation.¹⁰

3.2. SDG&E is in Compliance with the Law

Based upon the undisputed facts alleged in the pleading, Benninghoff has failed to sufficiently assert that SDG&E is out of compliance with NEM legislation. But in addition to making this determination, the Commission may inquire as to whether or not SDG&E is in fact out of compliance with the actual utility obligations regarding NEM customer information. Legislation and the Commission require utilities to provide a set of useful information to their NEM

¹⁰ Solely for the benefit of Benninghoff's understanding of the NEM process, the following simplified hypothetical is presented. Perhaps a residence with solar is using no electricity on a sunny day, and therefore in one hour 3 KW of power is flowing from the residence to the utility, resulting in a net flow to the grid of 3 KWh of energy. All the utility knows is that the meter registered, for that hour, 3 KWh exported from the customer to the utility. Then perhaps the next hour the same customer starts charging his electric vehicle, and the vehicle requires 3 KW of power, and the customer charges for 1 hour, resulting in a net flow of 0 KWh from the customer to the grid (that is, the customer is fully using his solar production of 3 KWh of energy). All the utility knows is that the meter registered, for that hour, 0 KWh exported from the customer to the utility. Then perhaps the next hour, in addition to charging the electric vehicle, the customer turns on all his air conditioning, and that electrical load also requires 3 KW of power, and the customer leaves the air conditioning on for one hour, resulting in a net flow of 3 KWh coming from the grid to the customer (that is, the customer is fully using his 3 KWh of solar production, and is also using 3 KWh from the utility). All the utility knows is that the meter registered, for that hour, 3 KWh imported from the utility to the customer. Assuming all other things are equal, the result for those three hours is a net 0 KWh flowing to the residence or to the utility. The utility only knows the flow: the utility does not know about the customer's solar production during those three hours (which totaled 9 KWh), or the customer's electrical usage during those three hours (which totaled 9 KWh), or anything else that happened "behind the meter." This is net energy metering, and demonstrates the impact of placing the utility "in front of the meter." Therefore, while the Complaint demands that SDG&E provide "the amount of solar-generated power [the utility] alleges was produced by the solar panels... the amount allowed to me for the electricity power generated by my panels... how much solar energy I am credited and the monthly savings gained", by this set of examples it should now be clear that such information is not calculable by a utility, which knows only the net export or import of electricity. That "net metering" information is found on Benninghoff's SDG&E billing.

customers, in a format that would enable their NEM customers to meaningfully review and understand that information.

SDG&E sends monthly bills to Benninghoff.¹¹ Those bills are in general conformance with SDG&E's Schedule NEM, Special Condition No. 3(c), which establishes the requirements for the utility to provide NEM customers with information regarding their monthly and annual electricity billing. More specifically, SDG&E's billing form was approved by the Commission, both in terms of information and format, through its Advice Letter 2954-E.¹²

A side-by-side comparison of the Commission-approved SDG&E Advice Letter's NEM customer information and information-formatting with the actual monthly billing that SDG&E provided to Benninghoff demonstrates that SDG&E was compliant in providing Benninghoff with the NEM information that it was required by legislation and by the Commission to provide to its NEM customers.

Therefore, it is conclusively proven that Benninghoff is not only seeking information that SDG&E cannot provide (from the other side of the meter), but also that the information Benninghoff is seeking is beyond that which the Commission has required SDG&E to provide in compliance with its approved regulatory Advice Letter. Given these facts and this demonstration of regulatory compliance, the Commission does not now require SDG&E to somehow provide such additional information as Benninghoff seeks from the Complaint elements related to that issue. This first Complaint demand -- stated otherwise, this cause of action -- is dismissed.

¹¹ SDG&E Motion at 6; Motion Attachment A.

¹² <http://regarchive.sdge.com/tm2/pdf/2954-E-A.pdf>.

3.3. Benninghoff Withdrew His Complaint Demand for Relief for Similarly-Situated NEM Customers

In his "Demand 2," Benninghoff asserted that "The PUC must force SDG&E to provide the same thoughtful energy computations for every permitted energy producer who generates energy by solar power and an assisting liason [sic]." However, in his self-styled "Request To Discard Answer Because It Contains False Information and Innuendos," Benninghoff expressly requested "to remove DEMAND 2" (page 1). This second Complaint demand -- stated otherwise, this cause of action -- is deemed withdrawn and need not be further addressed.

3.4. Benninghoff's Request for a "Summary Administrative Court" is Denied

In his "Demand 3," Benninghoff asserted that "The PUC must establish a summary administrative court to decide contests." This issue is worded such that there are a number of possible meanings or intentions. First, it is the case that this issue, as stated, is simply too vaguely worded to understand the Complainant's meaning and intent. Therefore, this issue must be dismissed for failing to state a basis upon which relief can be granted. Second, if this issue is seeking relief on behalf of others, Commission Rules bar a Complaint from being brought on behalf of others without authorization. Third, if the Complainant is referring to just such activities as are exercised through the Commission's Consumer Affairs Branch, which effectively resolves many forms of disputes that customers may have with utilities, or if the Complainant is referring to the Expedited Complaint Procedure available directly through the Commission under Rule 4.6, then these venues already exist. Fourth, if the Complainant is essentially seeking exactly such adjudication as this Complaint is itself presently

receiving, then its demand for summary administration of contests is already being met.

If ultimately this issue is indeed a request for a new and unique process or for new and unique laws or Rules, then this issue cannot be adjudicated through this Complaint process. Instead, the Complainant may seek such relief through filing a Petition for Rulemaking under Rule 6.3. Consequently, the issue must be dismissed, as the remedy sought is unavailable to this Complainant through his Complaint.

This third Complaint demand -- stated otherwise, this cause of action -- is dismissed.

Therefore, we will grant the Motion To Dismiss with prejudice.

4. Conclusion

The Commission will grant the SDG&E Motion To Dismiss with prejudice. The Benninghoff Complaint, even assuming its facts to be true, fails to state any valid claim. Moreover, given SDG&E's compliance with the Commission's Rules and requirements regarding its administration of the NEM process, Benninghoff cannot state a claim upon which relief can be granted. Regarding Benninghoff's other existing claim, under any conceivable view, he is not entitled to relief regarding the establishment of a new adjudicatory system.

5. Categorization and Need for Hearing

The Complaint's category is adjudicatory. There will be no need for evidentiary hearing.

6. Comment Period for Proposed Decision

The proposed decision of ALJ Jungreis in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments

were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

7. Assignment of Proceeding

President Michael Picker is the assigned Commissioner and Jason Jungreis is the assigned ALJ in this proceeding.

Findings of Fact

1. On February 8, 2018, Charles F. Benninghoff, III (Benninghoff) filed his Complaint against SDG&E. The Complaint was not for monetary damages, and instead sought what is best described as a plea for declaratory relief.

2. Benninghoff's Complaint "Demands" are best described as follows: A. Requiring SDG&E to create a "reconciliation" of Benninghoff's solar production and the reduction of Benninghoff's total energy charges due to his solar production; B. requiring SDG&E to provide this same reconciliation to all small solar energy producers; C. Requiring the California Public Utilities Commission (Commission) to "establish a summary administrative court to decide contests."

3. On March 22, 2018, SDG&E filed its Answer to the Complaint, including Affirmative Defenses asserting that Benninghoff had not met his burden of alleging or showing an SDG&E violation of law, asserting that it had complied with Commission requirements for providing Net Energy Metering (NEM) customer information, and asserting that Commission Rules bar a Complaint from being brought on behalf of others without authorization.

4. On March 28, 2018, Benninghoff e-mailed the ALJ an apparent legal brief titled "Request To Discard Answer Because It Contains False Information & Innuendos"; in that document, Benninghoff requested that the ALJ "remove DEMAND 2."

5. On April 4, 2018, SDG&E filed its Motion To Dismiss the Benninghoff Complaint. The basis for the Motion is that the procedural posture and undisputed facts find that Benninghoff did not allege that SDG&E is in violation of law; that SDG&E is in compliance with the law regarding NEM customer information disclosures; that Benninghoff withdrew his “Demand 2”; and, that Benninghoff’s “Demand 3” cannot stand either or both because it is a request for new law or because its demand that the Commission provide administrative courts is already met.

6. On May 17, 2018, after extensions were granted due to Benninghoff’s confusion as to the procedural posture of the matter, Benninghoff appears to have sought to (late) serve his Opposition to the Motion To Dismiss (the document went unfiled).

7. On May 25, 2018, SDG&E filed a permitted Reply to the Benninghoff Opposition (an attempted Benninghoff Sur-reply, served but not filed, was ignored as unpermitted).

8. On April 18, 2018, a Ruling set a Prehearing Conference for May 30, 2018. On May 25, 2018, on behalf of both parties, SDG&E filed a Joint Case Management Conference Statement. Benninghoff did not appear at the May 30, 2018 Prehearing Conference.

9. Benninghoff is a NEM customer of SDG&E.

10. Benninghoff has a single two-way meter that measures flow from the grid to the residence and from the residence to the grid.

11. SDG&E relies upon the information it receives from the electrical meter to determine the amount of energy that flows into and out of the Benninghoff residence.

12. SDG&E provided Benninghoff monthly utility bills with the information, and in the form, required by the Public Utilities Code and by the Commission and in accordance with its approved tariff, in conformance with SDG&E's Schedule NEM, Special Condition No. 3(c), and as approved by the Commission, both in terms of information and format, through its Advice Letter 2954-E.

13. SDG&E does not have a means to know how much total energy is produced by Benninghoff's solar installation.

14. SDG&E cannot provide Benninghoff with a reconciliation of the amount of solar-generated energy produced by his solar installation.

Conclusions of Law

1. A Complaint, or part of it, may be dismissed by the Commission.
2. The Public Utilities Code and the Commission controls the various aspects of the informational relationship between a utility and a NEM customer.
3. SDG&E provided Benninghoff with the information, and in the form, required by the Public Utilities Code and by the Commission.
4. A Complaint cannot require the Commission to establish a summary administrative court to decide contests.
5. Benninghoff's Complaint should be dismissed with prejudice.
6. Evidentiary hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company's Motion To Dismiss the Complaint of Charles F. Benninghoff III is granted with prejudice for failure to state any causes of action for which relief may be granted.

2. Case 18-02-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.